DOCKET NO.: FST-CV21-6050152S	:	SUPERIOR COURT
CONRADO GONZALEZ, et al.	:	J.D. OF STAMFORD
V.	:	AT STAMFORD
SYNAGRO-CONNECTICUT, et al.	:	APRIL 20, 2021

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT SYNAGRO'S MOTION TO STRIKE

I. BACKGROUND

This matter arises out of an explosion which occurred at approximately 10:46 P.M. on August 1, 2019, at Stamford WCPA facility, located at 111 Harborview Avenue, Stamford, Connecticut. The plaintiffs, Conrado Gonzalez and Robert Zeug, have brought suit against the defendants, the City of Stamford and Synagro-Connecticut, LLC (hereinafter "Synagro"). The plaintiffs filed a complaint on January 19, 2021, with a return date of February 23, 2021.

For the limited purpose of the instant motion to strike, the following facts as alleged by the plaintiff are presumed to be true. On August 1, 2019, at approximately 10:46 p.m., the plaintiff, Robert Zeug, was an employee of Aerotek Engineering and Environmental and the plaintiff, Conrado Gonzalez, was an employee of the City of Stamford. (Comp. ¶¶ 5). The complaint alleges that at said time and place, Defendant Synagro contracted with the City of Stamford to operate and manage the facility; perform all normal and ordinary maintenance; keep the facility in good working order and in an orderly condition to use and care and diligence and take all reasonable and appropriate precautions to protect the facility from loss or damage. (Comp. ¶ 4). The plaintiffs' complaint alleges that at said time and pace, an explosion occurred due to the buildup of combustible dust in the air and a spark from a "firefly" or a burning ember. (Comp. ¶ 5). The First, Second, Third, Fifth, Sixth, Seventh Counts of the Complaint sound in negligence, recklessness and ultra-hazardous activity, respectively, against the defendant, Synagro. But for the allegations of "willful and reckless conduct," the

allegations and basis for recovery in the Second and Sixth Count are the same as that alleged to be negligent in the First and Fifth Count. Further, the defendant, Synagro, does not conduct business that is considered to be ultra-hazardous as defined by the Connecticut Superior Court and the plaintiffs' allegations fail to set forth a viable claim for the same. Accordingly, the plaintiffs fail to set forth claims upon which relief can be granted and the Second, Third, Sixth and Seventh Counts should be stricken against Synagro.

II. <u>LEGAL STANDARD</u>

A motion to strike is the appropriate pleading to contest the legal sufficiency of the factual allegations found in the plaintiff's complaint. "The purpose of a motion to strike is to contest ... the legal sufficiency of the allegations of any complaint . . . to state a claim upon which relief can be granted." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC* v. *Alves,* 262 Conn. 480, 498, 815 A.2d 1188 (2003). "A motion to strike challenges the legal sufficiency of a [complaint] . . . and, consequently, requires no factual findings by the trial court." (Internal quotation marks omitted.) *Batte-Holmgren* v. *Commissioner of Public Health,* 281 Conn. 277, 294, 914 A.2d 996 (2007).

The role of the trial court in ruling on a motion to strike is "to examine the [complaint], construed in favor of the [plaintiff], to determine whether the [pleading party has] stated a legally sufficient cause of action." (Internal quotation marks omitted.) *Dodd* v. *Middlesex Mutual Assurance Co.,* 242 Conn. 375, 378, 698 A.2d 859 (1997). "In ruling on a motion to strike, the court is limited to the facts alleged in the complaint." (Internal quotation marks omitted.) *Faulkner* v. *United Technologies Corp.,* 240 Conn. 576, 580, 693 A.2d 293 (1997). "A motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged." (Internal quotation marks omitted.) *Bridgeport Harbour Place I, LLC* v. *Ganim,* 111

Conn. App. 197, 203, 958 A.2d 210 (2008). "Practice Book § 131 [now § 10-20] requires a plaintiff to plead only the facts constituting his or her cause of action. A motion to strike admits all *facts* well pleaded; it does not admit *legal conclusions or the truth or accuracy of opinions* stated in the pleadings." (Emphasis in original; internal quotation marks omitted.) *Faulkner* v. *United Technologies Corp., Sikorsky Aircraft Div.*, 240 Conn. 576, 588, 693 A.2d 293 (1997).

III. ARGUMENT

A. The Plaintiffs Have Failed to Allege Sufficient Facts to Support the Claims of Common Law Recklessness against Defendant, Synagro.

The Court should strike the Second and Sixth Counts of the plaintiffs' Complaint because it fails to allege a claim of common law recklessness as a matter of law. "Recklessness requires a conscious choice of a course of action either with knowledge of the serious dangers to other involved in it or with knowledge of facts which would disclose this danger to any reasonable man, and the actor must recognize that his conduct involves a risk substantially greater . . . than that which is necessary to make his conduct negligent." *Doe v. Boys Scouts of Am. Corp.*, 323 Conn. 303, 330 (2016). "More recently, [the Court] ha[s] described recklessness as a state of consciousness with reference to the consequences of one's acts." *Id.* "It is more than negligence, more than gross negligence." *Id.* In order to infer recklessness from conduct, "there must be something more than a failure to exercise a reasonable degree of watchfulness to avoid danger to others or to take reasonable precautions to avoid injury to them." *Id.* "Reckless conduct must be more than any mere mistake resulting from inexperience, excitement, or confusion, and more than mere thoughtlessness or inadvertence, or simply inattention . . . or even of an intentional omission to perform a statutory duty." *Northrup v. Witkowski*, 175 Conn. App. 223, 248 (2017) (internal quotation marks omitted). "[In sum, reckless] conduct tends to take on the aspect of highly unreasonable conduct, involving an extreme departure from ordinary care, in a situation where a

high degree of danger is apparent." *Id.*

As a preliminary matter, the plaintiffs' Complaint fails to sufficiently allege a claim for common law recklessness. The Second and Fifth Counts of the plaintiffs' Complaint simply alleges that the defendant was reckless for the same reasons it was negligent. "Allegations of recklessness differ from allegations of negligence because reckless conduct tends to take on the aspect of highly unreasonable conduct, involving an extreme departure from ordinary care, in a situation where a high degree of danger is." (Internal quotation marks omitted.) *Pecan* v. *Madigan*, 97 Conn. App. 617, 622 n. 5, 905 A.2d 710 (2006), cert. denied 281 Conn. 919, 918 A.2d 271 (2007). Common law recklessness must be plead with specificity, and in the present matter, the plaintiff does not sufficiently specify the allegedly reckless conduct. "[A] brief reference to recklessness, contained within a count which otherwise is clearly limited to ordinary negligence is [not] sufficient to raise a claim of reckless and wanton misconduct. Simply using the word 'reckless' or 'recklessness' is not enough. . . . Some additional factual allegations are necessary to alter the nature of the conduct complained of from an action for negligence to action for willful and wanton conduct . . . If the plaintiff merely reiterates the facts from the negligence count and inserts the word 'reckless,' a motion to strike is properly granted . . . If, however, the factual allegations in the negligence count are detailed and specific enough to support a claim of recklessness, the motion to strike may be denied." *Petner* v. *Electrical Contractors,* Inc., Superior Court, judicial district of New London, Docket No. CV-04-0569450-S (March 18, 2005, *Jones, J.*)

The conduct the plaintiffs do cite as reckless or deliberate is the very same conduct they allege constitutes negligence. There is no substantive difference between the allegations, other than nomenclature and simple re-characterization of the negligence counts as recklessness. In order to state a legally sufficient cause of action for recklessness, "a complaint should employ

language explicit enough to clearly inform the court and opposing counsel that reckless misconduct is relied on." *Dumond v. Denehy*, 145 Conn. 88, 91 (1958). Therefore, the plaintiff's conclusory allegations that the defendant was reckless is insufficient as a matter of law.

Furthermore, even if the plaintiff had adequately pled a claim of recklessness, the conduct alleged does not rise to the level of recklessness as a matter of law. Our Supreme Court, in the seminal case, *Matthiessen* v. *Vanech*, 266 Conn. 822, 832, 836 A.2d 394 (2003), held that "[r]ecklessness requires a conscious choice of a course of action either with knowledge of the serious danger to others involved in it or with knowledge of facts which would disclose this danger to any reasonable man, and the actor must recognize that his conduct involves a risk substantially greater . . . than that which is necessary to make his conduct negligent." *See Talareva v. Novakski*, Docket No. CV106006824, 2011 WL 1566003, at *3 (Conn. Super. Ct. Apr. 5, 2011) (granting a motion to strike where the plaintiff failed to assert any allegation as to the defendant's state of mind or any common-law reckless conduct sufficient to maintain a claim of common-law recklessness).

With respect to the defendant's state of mind, the plaintiffs' allegations fall below the required threshold. The allegations are conclusory and do not contemplate any supporting facts that a finder of fact could assess as demonstrative of a reckless state of mind. Indeed, there is not one single factual allegation in the plaintiffs' complaint to serve as a factual precedent to invoke as support for the assertion that defendant's conduct even posed a high degree danger to the plaintiffs. As a result, the Second and Sixth Counts fail to set forth a claim of common law recklessness as a matter of law.

B. The Plaintiffs Have Failed to Allege Sufficient Facts to Support the Claim of Ultrahazardous Activity Against Defendant, Synagro.

The Court should strike the Third and Seventh Counts of the plaintiffs' Complaint because

it fails to allege a claim of ultrahazardous activity as a matter of law.

Connecticut Courts recognize the doctrine of strict liability for dangerous activities and impose it only in narrow circumstances. Traditionally, strict liability for ultra-hazardous activity had been applied solely in the context of blasting and explosives. *Whitman Hotel Corp. v. Elliott & Watrous Engineering Co.,* 137 Conn. 562 (1951). It was later extended to pile driving (*Caporale v. C.W. Blakeslee & Sons, Inc.,* 149 Conn. at 85), research experiments involving highly volatile chemicals, (*Green v. Ensign-Bickford Co.*, 25 Conn. App. 479, 482-83, cert. denied, 220 Conn. 919, 597 A.2d 341 (1991); and the illegal display of fireworks (*Lipka v. DiLungo*, 2000 Conn. Supp. 3894, 26 Conn. L. Rptr. 654 (2000).

The Plaintiffs' allege in the Third and Seventh count that "at the times relevant, the defendant, Synagro, engaged in abnormally dangerous activities when the defendants received, handed, stored and disposed of combustible dust at the aforementioned Stamford facility." First, this mischaracterizes the work that Synagro actually performs. Synagro operates the subject plant for the purpose of drying and pelletizing municipal waste. The work it performs is not disposing or storing of combustible dust. Therefore, any argument to extend the application of ultra-hazardous activities to the subject case would be inappropriate and misplaced.

Notwithstanding the argument above, the four corners of the Complaint fail establish that the allegations of the work that Synagro performs of the handling and storage of dust does not fit within the common law definition of ultrahazardous activity. There are no allegations that Synagro is in the business of making explosives, pile driving, or experimenting with volatile chemicals. The handling and storage of dust has not been recognized by Connecticut Courts as an ultrahazardous activity. Therefore, the Third and Seventh Counts fail to set forth a claim for ultrahazardous activity as a matter of law, and the Court should strike the Third and Seventh

Counts of the plaintiffs' complaint against Synagro.

IV. CONCLUSION

For the foregoing reasons, the Court should grant the defendant Synagro's motion to strike the Second, Third, Sixth and Seventh Counts of the plaintiffs' Complaint.

RESPECTFULLY SUBMITTED,
THE DEFENDANT,
SYNAGRO-CONNECTICUT, LLC,
BY ITS ATTORNEYS,

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CERTIFICATION

This is to certify that a copy of the foregoing was or will immediately be mailed or delivered electronically or non-electronically on April 20, 2021, to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served.

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